

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RESCUE UNION SCHOOL DISTRICT.

OAH CASE NO. 2010100648

ORDER DENYING MOTION TO  
DISMISS

On October 7, 2010, Student's father on behalf of Student filed a request for due process hearing (complaint) naming the Rescue Union School District (District). On February 4, 2011, the District filed a motion to dismiss Student's complaint on the basis that Student's father does not currently possess the right to make educational decisions for Student. On February 8, 2011, Student filed a request for extension of time to respond to the motion. The Office of Administrative Hearings (OAH) granted that request on February 9, 2011. Student filed an opposition to the motion to dismiss on February 9, 2011. The District filed a reply on February 17, 2011.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Education Code section 56501, subdivision (a), provides, in part, that due process hearing procedures "extend to the parent or guardian, as defined in Section 56028...." Education Code section 56028 defines the word "parent" to include "a biological or adoptive parent of a child." The section goes on to provide that:

(b)(1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this part....

(Ed. Code, § 56028, subd. (b).)

When there is a question about whether an individual holds educational rights for a child, the federal courts look to the state cases and statutes to resolve the issue. (*Fuentes v. Board of Education* (2nd Cir. 2008) 540 F.3d 145; *Taylor v. Vermont Department of Education* (2nd Cir. 2002) 313 F.3d 768.)

## DISCUSSION

According to the exhibit filed with the District’s motion to dismiss, on October 19, 2010, after this case was filed, the El Dorado County Superior Court ordered that the right of Student’s father to make educational decisions for Student was “temporarily limited.”

The District argues that the court’s order removes the standing of Student’s father to maintain this special education case. Therefore the District seeks to dismiss this case or at least to limit the type of remedies that may be awarded at the due process hearing.

Student argues that the court’s order only temporarily limited the right of Student’s father to make educational decisions, so it is not appropriate to dismiss this due process proceeding. Student also argues that the case in question involves only the 2008-2009 and 2009-2010 school years, during which times Student’s father had the right to make educational decisions for Student. Student argues that the District denied Student a FAPE during those two school years and that Student’s father had to expend money in order to provide Student with an appropriate education.

Neither party cites to California case authority which addresses the issue of whether a parent who held educational rights at one time can bring a due process complaint to recover educational expenses that the parent claims were incurred in the past due to a denial of FAPE. However, from a policy point of view, it makes sense to allow Student’s father to continue with this action. Special education law is designed to protect the rights of parents as well as their children. (20 U.S.C. 1400(d)(1)(B).) If Student’s father could not bring a due process action to recover past amounts he spent on Student’s education at a time when he held educational rights, he might have no forum in which to protect his rights under special education law. (See *A.M. v. Monrovia Unified School District* (9th Cir. 2010) 627 F.3d 773, 782 (death of pupil did not moot parents’ IDEA claim for reimbursement of expenses).)

Alternatively, the District argues that the remedies sought in the complaint should be limited to prevent any interference with Student’s current educational program. The

District's position may have merit, but it is premature to decide that issue now. The Superior Court's order limiting the educational rights of Student's father was, by its terms, only temporary. That order may change by the time of the hearing in this case. If the limit of the educational rights of Student's father continues at the time of the hearing, the administrative law judge hearing the case will be able to determine the appropriate remedy in light of the Superior Court's order. The determination of the remedy in a due process case is always a matter within the discretion of the administrative law judge. (See *School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996; 85 L.Ed.2d 385].)<sup>1</sup>

#### ORDER

The District's motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: February 22, 2011

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> For the first time in its reply papers, the District also argues that Student's mother should be joined as a party in this case. If the District or anyone else wishes to make a motion to join Student's mother as a party, joinder can be considered at that time. However, the absence of Student's mother from this case is not a basis for dismissal.